IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 350 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PURSHOTTAMBHAI R VANKAR

Appearance:

Mr K C Shah, Addl.PUBLIC PROSECUTOR for Petitioner

MR VP THAKKER for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE D.P.BUCH

Date of decision: 12/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

In this appeal, which has been filed under section 378 of the Criminal Procedure Code, the State has challenged the acquittal of the respondent of the offences punishable under section 161 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act, 1947, recorded by the learned Special Judge, Baroda vide judgement and order dated February 24, 1987 rendered in Special Case No.5/85. The complainant, Bhailalbhai is the resident of village Kanpur, Taluka Karjan, District Vadodara. The accused, at the relevant time, was discharging the duties as Talati-cum-Mantri at village Karjan and was a public servant. The complainant had purchased plot No.20 out the land bearing survey no.1192 on December 1, 1983 for an amount of Rs.999/- from one Vithalbhai Ranchhodbhai Vankar of Karjan. Three other persons i.e. Laxmanbhai Parmar, Khumansingh Solanki and Raojibhai Master had also purchased certain plots at Karjan. The lands belonging to the complainant and the abovenamed three persons were to be mutated in their respective names and therefore, they had approached the respondent. The complainant had met the respondent at his office at Karjan on March 6, 1984 at about 2.30 p.m. in company of Laxmanbhai Parmar for mutation of plot purchased by him in his name as well as mutation of plots purchased by three other persons but at that time the respondent had demanded an amount of Rs.50/- each from the complainant and other owners of the plots and though the complainant and Laxmanbhai had shown willingness to pay an amount of Rs.30/-, the respondent had insisted that they all should pay Rs.50/each, for mutating the lands in their respective names. On March 21, 1984, at about 7.30 p.m., the respondent had met the complainant at or near Karjan Railway station and at that time also he had demanded an amount of Rs.200/- from the complainant for the mutation of the four plots in the names of the complainant and other three persons. The case of the prosecution is that the complainant others were not willing to pay illegal gratification demanded by the respondent and, therefore, the complainant had approached Mr Mehta, the Inspector of ACB at Baroda at 9.25 p.m. at his office where a formal complaint was recorded. At that time, the complainant had produced an amount of Rs.200/- in the form of currency notes, which were to be paid to the respondent by way of illegal gratification. Two panchas viz; Karamatkhan and Chandrakant Upadhyay were called. The currency notes produced by the complainant were smeared with anthracene powder in the presence of panchas and later on they were inserted in the left side bush shirt pocket of the complainant. Thereafter, necessary directions were given to the Panchas and to the members of the raiding party

and the first part of the panchnama was completed, and the entire party thereafter had left for Karjan. The vehicle in which the members of the raiding party were travelling had stopped near Karjan railway station crossing and the complainant and panch no.1 had firstly gone towards the office of the accused while panch no.2, Inspector Mr Mehta and other members of the raiding party had followed them. The complainant and panch no.1 had entered into the office of the accused but he was found to be absent. However, one Dahyabhai Parmar was found to be present and on inquiry he had informed the complainant and panch no.1 that as the Circle Inspector was on visit, the accused had gone out in his company. Later on the complainant and panch no.1 had come out of the office of the accused with a view to searching for him but meanwhile the accused was found to be coming from the opposite direction to his office and all had returned to the office of the accused. The accused had sat near his desk and had asked the complainant to bring a blank form from the Bazaar which was brought by the complainant. Thereafter, certain entries were made by the respondent in the register and later on he had demanded illegal gratification. The case of the prosecution is that the complainant had taken out money from his bush shirt pocket and after counting the same with his both hands he had handed over the same to the accused who had accepted the same with his right hand and later on after counting the currency notes, had placed the same in his desk. Thereupon, panch no.1 had come out of the office and had given signal to the raiding party, as a result of which, raid was carried out and currency notes were taken out from the desk of the accused through panch no.1. The number of the currency notes found from the desk were found to be tallying with the number of notes mentioned in the first part of panchnama. The hands of the complainant, respondent and panch no.1 were seen in ultra violet lamp and anthracene powder was noticed. Thereafter, the second part of the panchnama was concluded and signatures of the panchas were obtained thereon. After necessary investigation, the respondent was charge-sheeted before the learned Special Judge, Vadodara for the offences punishable under Section 161 of the IPC and Section 5(2) of the Prevention of Corruption Act, 1947. The learned Special Judge had framed charges against the respondent at Exh.7 which was read over to the respondent. The respondent did not plead guilty to the same and claimed to be tried. Therefore, the prosecution examined several witnesses to bring home guilt of the accused. After recording of evidence of prosecution witnesses was over, statement of the respondent under section 313 of the Code of Criminal

Procedure was recorded by the learned Special Judge. Though the respondent claimed that he was innocent, he did not examine any witness in support of his defence. On appreciation of evidence, the learned judge has acquitted the respondent by judgment dated February 24, 1987 giving rise to the present acquittal appeal.

2. Mr K C Shah, learned Additional Public Prosecutor submitted that evidence of the complainant read with evidence of the panch witnesses and Investigating Officer establishes that the respondent had demanded and accepted an amount of Rs.200/- by way of illegal gratification on March 24, 1984 and, therefore, the respondent ought to have been convicted of the offences punishable under section 161 of IPC and section 5(2) of the Prevention of Corruption Act, 1947. According to the learned counsel, non-examination of Laxmanbhai Parmar, Khumansingh and Raojibhai Master should not have been given undue importance when the case of the prosecution is proved beyond reasonable doubt by the trustworthy and reliable testimony of the complainant, panch witnesses and the Investigating Officer. What was emphasized on behalf of the State was that in view of the overwhelming evidence led by the prosecution, the learned Special Judge should not have believed the defence of the respondent to the effect that because of grudge, the complainant had filed a false complaint against him.

3. We have heard the learned APP for the State and the learned counsel for the respondent and considered the evidence on record. Prima facie, it would appear that the prosecution has proved its case of demand and acceptance of Rs.200/- as illegal gratification by the respondent on March 24, 1984 at his office but a close scrutiny of the evidence on record indicates following glaring defects in the case of prosecution. According to the complainant, illegal gratification was demanded by the respondent for effecting mutation entries in the revenue record. But the evidence on record clinchingly establishes that the mutation entries were already made in the revenue records in the names of the complainant and other persons to the knowledge of the complainant. Thus, there was no reasons for the complainant and his associates to give illegal gratification to the respondent. The prosecution did not examine three associates of the complainant viz; Laxmanbhai Parmar, Khumansingh Solanki and Raojibhai Master in support of the case of the prosecution that the respondent had demanded Rs.50/- each from the above referred to associates of the complainant for mutating entries in revenue record. It is an admitted position that the

complainant had given a complete go-by to his case of initial demand dated March 6, 1984. The case of the complainant that the respondent had demanded Rs.200/- from him on March 21, 1984 on or near Karjan Railway Station is highly doubtful and not trustworthy at all. Though we find that panch no.1 has in general, supported the case of the complainant but on actual demand, the panch witness has not supported the complainant and the panch has stated in his evidence before the Court that he had not been able to say as to when the actual demand was made by the respondent. Evidence regarding acceptance of currency notes by the respondent is also not trustworthy, because according to the case of the prosecution, after accepting the currency notes, the respondent had counted the notes by his both the hands and had placed them in the desk, but the upper side portion of the desk had not shown presence of anthracene powder at all. In the same way, the register also did not indicate presence of anthracene powder. It is the specific case of the prosecution that notes were taken out from the desk of the respondent by panch no.1 but as per the complainant, his hands were not seen under the rays of ultra violet lamp. Neither the evidence of the complainant nor evidence of the Investigating Officer establishes that emission of light blue florescent colour was noticed on the fingers of the respondent, currency notes etc. The evidence of the complainant and Investigating Officer establishes that one Dahyabhai Parmar and other persons were present at the time of the raid but they have not been examined by the prosecution as independent witnesses to prove its case against the respondent. Though the complainant had approached the office of the ACB on March 23, 1984, the complaint was recorded on March 24, 1984, giving the prosecution ample opportunity to select the panchas and lastly the respondent has probablised his defence that the complainant had grudge against him and had, therefore, filed false complaint against him.

4. This is an acquittal appeal. Although in an appeal from an order of acquittal the powers of the High Court to reassess the evidence and reach its own conclusions are as extensive as in an appeal against an order of conviction, yet, as rule of prudence, the Appellate Court should always give proper weight and consideration to such matters as (i) The views of the trial Judge as to the credibility of the witnesses; (ii) Presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (iii) the right of the accused to the reasonable benefit of any doubt; and (iv) slowness of an appellate court in disturbing a finding of

fact arrived at by a Judge, who had the advantage of observing demeanor of the witnesses.

5. The view taken by the learned Special Judge that the prosecution has failed to establish its case against the respondent beyond reasonable doubt is, in our view, eminently just, and even if another view is possible on the evidence on record, we would not be justified in interfering with the same in the present acquittal appeal.

6. It may be stated that we are agreeing generally with the view of the trial court and, therefore, we have not thought it necessary to reiterate the reasons given by the trial court in this judgment. This is so, in view of the decisions of the Supreme Court in the case of State of Karnataka v. Hemareddy & Anr. reported in AIR 1981 SC 1417 and in the case of Girijanandini v. Bijendra Narain, reported in AIR 1967 SC 1124. The learned APP has failed to dislodge the reasons recorded by the learned Special Judge for acquitting the respondent and, therefore, the acquittal appeal is liable to be dismissed.

7. For the foregoing reasons, this appeal fails and is accordingly dismissed.

12.3.2001 [J N Panchal, J.]

msp [D P Buch, J.]